

FCC MAIL SECTION

Federal Communications Commission

DA 98-2136

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 97-253
Table of Allotments,) RM-9198
FM Broadcast Stations.)
(Daingerfield and Ore City, Texas))

REPORT AND ORDER
(Proceeding Terminated)

Adopted: October 14, 1998

Released: October 23, 1998

By the Chief, Allocations Branch:

1. At the request of OARA, Inc. ("petitioner"), licensee of Station KWSK(FM), Daingerfield, Texas, the Commission has before it the *Notice of Proposed Rule Making*, 13 FCC Rcd 259 (1998) ("Notice"), proposing the substitution of Channel 295C3 for 295A at Daingerfield; the reallocation of Channel 295C3 from Daingerfield to Ore City, Texas, as the community's first local aural service and the modification of Station KWSK(FM)'s license to specify Ore City as the station's community of license. Petitioner filed comments reiterating its intention to apply for Channel 295C3, if reallocated to Ore City.

2. The proposed reallocation of Channel 295C3 from Daingerfield to Ore City was filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. *See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). Ore City, with a 1990 U.S. Census population of 898 persons, is a rural town located in northeast Texas. Ore City is an incorporated city, with a functioning city government. In the *Notice*, we recognized that Ore City has an independent school district, police and fire department, and city utilities. It also has community activities, such as five churches, a Masonic Lodge, Lion's Club, Ore City Garden Club, Ministerial Alliance, several youth sports leagues and a city park. Accordingly it is clearly a community for allotment purposes. In addition, the reallocation would provide the community with its first local aural transmission service and would not deprive Daingerfield of its sole local transmission service.¹ We note that since the proposed C3 facility at Ore City will provide 60dBu service signal contour over less than 50% of the Urbanized Area of Longview, Texas, a first local service to the community preference will be afforded to Ore City without an inquiry into the proposal's service to the Urbanized Area. *See Headland, Alabama and Chattahoochee*,

¹ Station KEGG(AM) is also licensed to Daingerfield.

Florida, 10 FCC Rcd 10352 (1995); *see also RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

3. In the *Notice*, we noted that there would be areas which would lose existing reception service as well as areas which would gain reception service. We also noted that petitioner claimed that adoption of its proposal would result in a net gain of service to 58,129 persons, while no loss area would be created. We asked petitioner to submit information detailing the gain and loss areas including land area and population. Although petitioner did submit information regarding area and population gains and losses, it was not sufficiently detailed, and further staff analysis was required. That staff engineering analysis reveals that the net service gain would actually be 66,666 persons, but there would be a small loss area containing approximately 1,400 persons. Of this population, 1,100 people would continue to receive 5 or more full-time reception services, and approximately 300 people would continue to receive at least four full-time reception services.

4. We believe the public interest would be served by reallocating Channel 295C3 from Daingerfield to Ore City, Texas. The reallocation will provide Ore City with its first local aural service, thus fulfilling priority (3) of the Commission's allotment priorities, while also enabling Station KWSK(FM) to provide service to an additional 66,666 persons.² While we are concerned with loss of service, our engineering analysis shows that all but approximately 300 people will retain five or more full-time reception services, thus being considered to be well-served; and as mentioned above, the remainder will have at least four full-time reception services.

Technical Summary

5. Channel 295C3 can be allotted to Ore City, Texas in compliance with the Commission's minimum distance separation requirements at a site 13.5 kilometers (8.4 miles) north-west of the community to accommodate petitioner's desired transmitter site.³

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective December 7, 1998, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City

Channel No.

² The FM allotment priorities are: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1982).

³ The coordinates for Channel 295C3 at Ore City, Texas, are 32-52-55 North Latitude and 94-49-18 West Longitude.

Ore City, Texas

295C3

7. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of OARA, Inc., for Station KWSK(FM) Channel 295C3, Daingerfield, Texas, IS MODIFIED to specify Ore City, Texas, as its community of license, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau